

Application No. 10/671,764

PATENT
Docket No. 58934-010300RECEIVED
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REMARKS

Claims 1-13 and 26-27 are currently pending in this application. Amendments to claims 1 and 27 are made in response. Consequently, claims 1-13 and 27 are still pending in this application.

Support for the amendments to the claims and the new claims can be found in the specification. Therefore, no new matter has been added. Amendment of a claim is not to be construed as a dedication to the public of any subject matter.

Claim Rejections - 35 U.S.C. § 102

The Examiner has rejected Claims 1 and 2 under 35 U.S.C. § 102 as being anticipated by US 5,702,856 by Utterberg. Examiner asserts that Utterberg in Figure 7 discloses the present claims by depicting the guideneedle assembly, a port cannula, an obturator rod, and a support frame.

However, Utterberg does not anticipate the present claims. The present claims are directed towards a tunnel port apparatus having a guarded needle tip, a blunt-tip port cannula overlying the guideneedle assembly, a tapered obturator rod with said port cannula, and support members supporting the assembly. The design of the apparatus allows for creation of a specialized tissue tract and as a conduit for implantation of a medical device. Nowhere in the Utterberg reference is there a disclosure, teaching or suggestion of a tunnel port apparatus having a guideneedle assembly having a guarded needle tip, a blunt-tip port cannula, and a tapered obturator rod. The apparatus in Utterberg is directed towards a right angle hypodermic needle with an injection site at the bend of the needle that is inline with its sharp end.

In the absence of any teaching or suggestion as presently claimed, in the Utterberg reference, anticipation of the present claims is negated. This is because all elements of the claimed invention must be disclosed in a single reference for anticipation to exist. Atlas Powder Co. v. E. I. DuPont de Nemours & Co., 750 F.2d 1569, 224 U.S.P.Q. 409 (Fed. Cir. 1984). Missing elements cannot be supplied by the knowledge of one skilled in the art or the disclosure

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of another reference in order to give rise to an anticipation rejection. Structural Rubber Products Co. v. Park Rubber Co., 749 F.2d 707, 223 U.S.P.Q. 1264 (Fed. Cir. 1984).

Specifically, the tunnel port apparatus in the present claims is different in form and function with the device disclosed in Utterberg. Independent claims have been amended to indicate the limitation of a guarded needle tip as a part of the guideneedle assembly. The blunting rod 82 in the Utterberg device is withdrawn before the device can be used to pierce the skin. The blunting rod functions as pre-use and post-use needle tip protector, preventing injury to the user of the device. It does not guide the assembly through the tissues. The guideneedle of the present claims included a guarded needle provided by a blunt tip obturator.

Additionally, the Utterberg device has a bladed tip on its on its tubular trocar needle 74, which Examiner asserts discloses the obturator in the present claims. The bladed tip trocar needle functions by cutting through the skin and the membrane of the vascular access device. Claim 1 and 27 have been amended to include the limitation of a tapered blunt obturator. The obturator of the present claims functions quite differently, utilizing the tapered blunt tip to advance through the tissues by a process of radial expansion. The tissue tract created by the radial dilatation is less traumatic to the individual and leaves a smaller residual passage than the Utterberg device that sharply cuts through the tissues with the bladed trocar.

Similarly, the claims have been amended to indicate a blunt-tip port cannula. In the Utterberg device, the port cannula is introduced into an access device by cutting through the skin with a bladed needle point. The needle point may comprise a sharp-tip cannula or blunt cannula over a sharp-tip needle. The blunt tip cannula in the present claims creates a tissue pathway by radial dilatation, and not cutting.

Hence, in the absence of any teaching or suggestion as presently claimed, in the Utterberg reference, anticipation of the present claims is negated. Accordingly, the absence of any disclosure or teaching in Utterberg of a tunnel port apparatus having a guideneedle assembly having a guarded needle tip, a blunt-tip port cannula, and a tapered obturator rod means that

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there is no anticipation rejection. Thus the Applicants respectfully request that the Examiner withdraw the 35 U.S.C. 102 (b) rejections to claims 1-13 and 26-27.

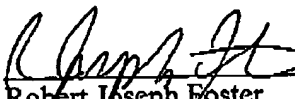
Conclusion

Applicants have complied with all requirements made in the above referenced communication. Applicants submit that the present application is in condition for allowance, and therefore, respectfully request that a timely Notice of Allowance be issued in this case. Should matters remain, which the Examiner believes could be resolved in a telephone interview, the Examiner is requested to telephone the Applicants' undersigned agent.

The Director is authorized to charge any additional fee(s) or any underpayment of fee(s), or to credit any overpayments to Deposit Account Number 50-2638. Please ensure that Attorney Docket Number 58934-010100 is referred to when charging any payments or credits for this case.

Respectfully submitted,

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